



Overall Policy Of Maintaining Parent-Child Relationships During Incarceration

The Washington Legislature has declared that it is the child’s right to have the family unit be nurtured and preserved.¹ It is recognized that “[pa]rents before the court in dependency proceedings rarely come without significant difficulties.”² Nonetheless, case law has established that “[t]he paramount goal of child welfare legislation is to reunite the child with his or her legal parents, if reasonably possible.”³ Ultimately, the court should only terminate parental rights “for the most powerful reasons.”⁴ However, within the child welfare system, incarcerated parents are almost twice as likely as other parents to lose their children.⁵ This is largely due to significant barriers in accessing social services and visits with their children.⁶ This is troublesome when we know that a growing body of research demonstrates that it is generally in the best interests of the child to maintain contact with their incarcerated parent.⁷ To that end, the Washington Legislature has increasingly taken affirmative steps to protect parent-child relationships when a parent is incarcerated.

Most recently, in response the growing body of research that demonstrates that it is generally in the best interests of the child to maintain contact with their incarcerated parent, the Washington Legislature passed near unanimously, Substitute House Bill

¹ RCW 13.34.020.

² *In re Dependency of T.L.G.*, 126 Wn. App. 181, 203, 108 P.3d 156 (2005).

³ *In re Dependency of K.N.J.*, 171 Wn. 2d 568, 577, 257, P.3d 522 (2011).

⁴ *In re S.J.*, 162 Wn. App. 873, 880, 256 P.3d 470 (2011) (quoting *In re Welfare of A.J.R.*, Wn. App. 222, 229, 896 P.2d 1298 (1995)).

⁵ Mimi Laver et al. al., *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents*, Child Welfare League of America, 8 (2005).

⁶ *Id.*

⁷ Creasie, Finney, Hairston, *Focus on Children with Incarcerated Parents: An Overview of the Research Literature*, Annie E. Casey Foundation (2007); see also See Inger P. Davis, John Landsverk, Rae Newton, and Williams Ganger, *Parental Visiting and Foster Care Reunification*, Children and Youth Services Review, Vol. 18, Nos. 4/5, 363–382 (1996). See Judge Leonard

1284.⁸ By enacting this bill, the Legislature significantly strengthened and built upon almost a decade long effort to help preserve parent-child relationships when a parent is incarcerated.⁹ Further, SHB 1284 was enacted in response to significant evidence that maintaining contact with one's incarcerated parent improves a child's emotional response to their parent's incarceration and supports parent-child attachment, while lowering the likelihood of recidivism among incarcerated parents and reducing chances of intergenerational incarceration.¹⁰

SHB 1284's enactment also followed almost ten years of work in Washington state regarding the importance of maintaining parent-child relationships during incarceration showing just how deeply children are affected by the incarceration of a parent.¹¹ For example, when attachment between a parent and a child exists and is interrupted, the child experiences trauma.¹² Their lives are disrupted and they are affected both socially and emotionally, which is one of the reasons that the importance of

⁸ Substitute H.B. 1284, 63rd Leg., Reg. Sess. (Wash 2013). Reports and Public Hearings, *available at*: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1284&year=2013> (last visited 2/07/15).

⁹ See H.B. 1426 (2005); E2SHB 1422 (2007); RCW 13.34.180, HB 1782 (2009).

¹⁰ Public testimony at the Senate hearings on March 14 and April 8, 2013, available under "Available Videos" at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1284&year=2013> (last visited 2/07/2015); see also *See, e.g., N.G. La Vigne et al., Examining the effect of incarceration and in-prison family contact on prisoners' family relationships*, J. Cont. Crim. Justice, 21(4) (2005).

¹¹ As early as 2005, the legislature passed H.B. 1426, creating an Oversight Committee on Children of Incarcerated Parents which included representatives from various interested parties including the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC). This committee issued recommendations, including recommendations that the State implement programs that increase the contact between incarcerated parents and their children, and strengthen the ability of the family to reunify upon release. Laws of 2005, ch. 403. The recommendations resulted in the 2007 passage of E2SHB 1422 (enacted as RCW 72.04.800 and RCW 72.09.495), which required DSHS to adopt policies encouraging familial contact between children and incarcerated parents with the goals of facilitating normal child development, reducing recidivism and intergenerational incarceration. Laws of 2007, ch. 384. Further, in 2009 the legislature amended RCW 13.34.180 as an attempt to prevent termination of parental rights where a parent was unable to maintain contact with a child for an extended period of time due to their incarceration. Laws of 2009, ch. 477.

¹² Lynne Reckman & Debra Rothstein, *A Voice for the Young Child with an Incarcerated Parent*, Children's Rights Litigation, American Bar Association (Jan. 9, 2012).

maintaining parent-child relationships is widely recognized.¹³ The lack of straightforward information about the parent's whereabouts may promote feelings of anxiety and abandonment in the child.¹⁴ When children feel unsafe or begin to interpret the world as unpredictable they can experience high levels of anxiety, which can result in depression, aggressive behavior or other forms of acting out.¹⁵ For the child, visiting with his or her parent can decrease feelings of loss and separation, help dissolve fears or fantasies about prison, and address issues that could lead to shame or fear.¹⁶

Further, there is evidence that preserving and strengthening the relationship between child and parent while a parent is incarcerated promotes permanency and reduces the potentially damaging effects of separation.¹⁷ While prison limits the activities that a family member can perform, a prisoner can still fill the important role in family life.¹⁸ This is true because visitation and other contact allow children to express their emotional reactions to the separation from their parent.¹⁹ It helps the child develop a more realistic understanding of their parent's circumstances and allows children to maintain existing relationships with their parents.²⁰ Contact with their incarcerated parent allows children to preserve important connections and allows them to know that their parent is safe.²¹

Common assumptions about children whose parents are incarcerated include ideas

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *Connecting Children With Incarcerated Parents*, Child Protection Best Practices Bulletin, available at http://www.nmcourts.gov/CourtImprovement/best/best_practices_docs/connecting_children_with_incarcerated_parents_-_formatted.pdf

¹⁶ See Sanders & Dunifon, *supra*, at 3 (citing several studies).

¹⁷ *Healthy Beginnings, Healthy Futures: A Judge's Guide*, American Bar Association Center on Children and the Law (2009).

¹⁸ National Human Services Assembly, *Supporting Families of Incarcerated Parents: Policy Brief No. 8*, Family Strengthening Policy Center (Sept. 2005).

¹⁹ See *Child Protection Best Practices Bulletin*, *supra*.

²⁰ *Id.*

²¹ *Id.*

that young children are better off not seeing a parent who is in jail or prison and that young children are better off not knowing the parent at all.²² However, with current research and literature we now know that young children are often resilient in the face of trauma of separation from the parent.²³ On the contrary to what was believed, managing the relationship between the child and incarcerated parent (e.g. by preparing the child before and after visits regarding what to expect) promotes permanency, eases the child's feelings of anxiety and loss, and reduces the "damaging effects of separation."²⁴

Children Benefit When Parent-Child Relationships Are Preserved During A Parent's Incarceration.

Our current law supports incarcerated parents' ability to maintain meaningful contact with their children, avoiding severing ties, and allowing for better child outcomes. Current research supports that it is in the best interest of the child to maintain a meaningful role with their incarcerated parent. Research shows that when children of incarcerated parents have strong, healthy relationships with others, they cope better with the loss of their parent and exhibit fewer problematic behaviors.²⁵ One well cited-report shows how working together, with supportive parents and caregivers, children have the best outcomes:

Although the most important relationship to develop and maintain is probably that which exists between child and parent, a supportive relationship with a caregiver, mentor, or other adult in the community may lead to similar benefits in the child's life. Such benefits can, in turn, contribute toward healthier families and communities across the nation.²⁶

²² Supra note 12.

²³ *Id.*

²⁴ *Id.*

²⁵ La Vigne, et. al, *Understanding and Addressing the Needs of Children with Incarcerated Parents*, Urban Institute Justice Policy Center Research Report, 14 (2008).

²⁶ *Id.*

Additionally, maintaining a connection between the child and incarcerated parent was shown to further help children by better allowing them to express their emotional reactions to separation from the parent; promoting a more realistic understanding of the circumstances; maintaining existing relationships in order to contribute to an eventual, successful family reunification; improving recidivism rates; preserving important connections; and reducing child anxiety by knowing their parent is safe.²⁷

The Impact of Withholding Information from Children

One study found that children who were told about their parent's incarceration in an open, honest and age-appropriate manner and children who reacted with loneliness, rather than anger, to the separation from their parents, were slightly more likely than other children in the study to have secure, positive perceptions of their caregivers.²⁸

Maintaining Family Ties through Visitation

Maintaining family ties can lessen the negative impact of incarceration on families and children.²⁹ Studies have shown that maintenance of family ties during incarceration, especially through in-person visits, is one possible means of lessening the negative impact of incarceration on families and children. Visiting allows children to actually see their parents and be assured that they are safe. Without this contact, children may begin to view their parents as strangers and believe that their parents neither love nor care about them.³⁰

²⁷*Supra* note 12.

²⁸Poehlmann, J., *Representations of Attachment relationship in children of incarcerated mothers*, *Child Development*, 76 (3), 679-696 (2005). (Data were collected from 54 children ages 2-7 whose mothers were incarcerated).

²⁹ La Vigne et. al., *Examining the effect of incarceration and in-prison family contact on prisoners' family relationships*. *Journal of Contemporary Criminal Justice*, 21 (4), 314-335 (2005).

³⁰*Id.*

From the voices of youth, we find that although their parents may be less than perfect, the love that they have for their parents is as real and strong as any other child's. The loss experienced by these children when their relationships are severed is real. This loss is one that we should be concerned about since there is significant evidence that maintaining contact with one's incarcerated parent improves a child's emotional response to their parent's incarceration and supports parent-child attachment as well as lowers the likelihood of recidivism among incarcerated parents. In the infamous book, All Alone in the World: Children of the Incarcerated, written by Nell Bernstein, a young person says: "There was so much emphasis on me, supposedly, that they forgot about her... [w]hat would have helped me most is compassion for my mom."

Further, evidence based research shows it is in the best interest of children to remain in phone and visitation contact with their parents while they are in prison as the parent and child will be able to maintain ties as it will bolster the child's well-being and healthy development; reduce the trauma of separation; and where appropriate, assist families in reunification after their parent's release.³¹ It will also help correct frightening images children may have about their incarcerated parent's circumstances.³² Finally, it allows children to learn that they are not alone – by seeing other children visit their

³¹ See Mary Ellen White, Eric Albers, and Christina Bitonti, *Factors in Length of Foster Care: Worker Activities and Parent-Child Visitation*, *Journal of Sociology and Social Welfare*, Vol. XXIII, No. 2, 75–84. (June, 1996); Inger P. Davis, John Landsverk, Rae Newton, and Williams Ganger, *Parental Visiting and Foster Care Reunification*, *Children and Youth Services Review*, Vol. 18, Nos. 4, 5, 363–382. (1996); Judge Leonard P. Edwards, *Judicial Oversight of Parental Visitation in Family Reunification Cases*, *Juvenile and Family Court Journal* (Summer 2003).

³² Ann Adalist-Estin, *Why Maintain Relationships?*, The National Resource Center on Children and Families of the Incarcerated at Rutgers-Camden, Children of Prisoners Library, Facts and Issues: CPL 102 (2003). Available at <http://nrccfi.camden.rutgers.edu/resources/library/children-of-prisoners-library/> (last visited 11/24/14).

parents, it helps children learn that their situation is not unique and that there are other families like their own.³³

By enacting SHB 1284, the Legislature significantly strengthened and built upon its efforts to help preserve parent-child relationships when a parent is incarcerated. Therefore, in order to uphold the Legislature's intent, SHB 1284 must be properly interpreted and applied by the Department and the courts.

³³ *Id.*